

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MONADNOCK CONSTRUCTION, INC.,

Plaintiff,

-against-

WESTCHESTER FIRE INSURANCE  
COMPANY,

Defendant.

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WESTCHESTER FIRE INSURANCE  
COMPANY,

Third-Party Plaintiff,

-against-

GLASSWALL, LLC, UGO COLOMBO, and  
SARA JAYNE KENNEDY COLOMBO,

Third-Party Defendants.

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**NOTICE OF MOTION TO DISMISS AMENDED COMPLAINT**

PLEASE TAKE NOTICE that upon the annexed Declaration of James P. Cinque, Esq., sworn to November 30, 2017 and the exhibits annexed thereto, third-party defendant Glasswall, LLC will move this Court at the United States Courthouse, United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, before the Honorable Jack

B. Weinstein on January 15, 2018 at 10:00 a.m. or as soon thereafter as counsel can be heard for an Order:

(A) dismissing the amended complaint against Westchester Fire Insurance Company pursuant to Federal Rules of Civil Procedure 14(a)(2)(C) and 12(b)(6) upon the following grounds:

(i) plaintiff cannot assert any claims under the Bonds, as the arbitration award specifically determined that plaintiff “wrongfully refused to accept delivery of the windows” and therefore was “in breach of the Subcontracts,” and the Bonds subject to the amended complaint specifically provided that defendant Westchester Fire’s obligation under the Bonds only arises if plaintiff did not breach the Subcontracts; and

(ii) plaintiff has not sustained any actual damages in light of the arbitration award’s finding that: “It is undisputed that (plaintiff) Monadnock was reimbursed by the Owners for all costs incurred for the performance of the Window Work;” and

(B) dismissing the third-party complaint against Glasswall, LLC upon the grounds that:

(i) the fraudulent conveyance claims do not “aris(e) out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff;”

(ii) the new claims are barred by the “claim preclusion” doctrine;

(iii) the claims are subject to a prior pending action in the Florida State Court and this Court should abstain from proceeding; and

(iv) to the extent that such claims are viable, they are subject to an arbitration agreement.

PLEASE TAKE FURTHER NOTICE that pursuant to stipulation among counsel

answering papers must be served on or before December 29, 2017.

DATED: NEW YORK, NEW YORK  
NOVEMBER 30, 2017

Respectfully submitted,

CINQUE & CINQUE, P. C.

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